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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170803719-7719-01)]

RIN 0648-BH10

Temporary Rule to Establish Management Measures for the Limited Harvest and Possession of South Atlantic Red Snapper in 2017

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS issues this final temporary rule to establish management measures to allow for the limited harvest and possession of red snapper in or from the South Atlantic exclusive economic zone (EEZ) in 2017 by changing the process used to set the annual catch limit (ACL), as requested by the South Atlantic Fishery Management Council (Council). This rule also announces the opening and closing dates of the 2017 recreational fishing season and the opening date for the 2017 commercial fishing season for red snapper. The intended effect of this temporary rule is to reduce, to the extent practicable, existing adverse socio-economic impacts to fishermen and fishing communities that utilize the red snapper portion of the

snapper-grouper fishery, without allowing overfishing or preventing the stock from rebuilding. Additionally, limited commercial and recreational harvest of red snapper in 2017 will provide an opportunity to collect fishery-dependent data that will be useful for future red snapper stock assessments and management decisions.

DATES: This temporary rule is effective [*insert date of publication in the FEDERAL REGISTER*], through December 31, 2017. The recreational red snapper season opens at 12:01 a.m., local time, on November 3, 2017, and closes at 12:01 a.m., local time, on November 6, 2017; then reopens at 12:01 a.m., local time, on November 10, 2017, and closes at 12:01 a.m., local time, on November 13, 2017. The commercial red snapper season opens at 12:01 a.m., local time, [*insert date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of the documents in support of this temporary rule, which include an environmental assessment, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.html>.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail: nikhil.mehta@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage South Atlantic snapper-grouper including red snapper under the Fishery

Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

Background

Harvest of red snapper from South Atlantic Federal waters was prohibited in 2010 through a temporary interim rule and then through Amendment 17A to the FMP when the stock was determined to be overfished and undergoing overfishing (Southeast Data, Assessment, and Review (SEDAR) 15, 2009) (74 FR 63673, December 4, 2009; 75 FR 76874, December 9, 2010). Amendment 17A also implemented a 35-year red snapper rebuilding plan that began in 2010, and set the red snapper ACL at zero. Amendment 28 to the FMP established a process that allowed red snapper harvest (ACL greater than zero) if total removals (landings plus dead discards) were less than the acceptable biological catch (ABC) in the previous fishing year (78 FR 44461, July 24, 2013). Limited harvest of red snapper was allowed in 2012, 2013, and 2014. However, because the estimated total removals of red snapper exceeded the ABC in 2014, 2015, and 2016 due to estimates

of red snapper discards that were incidentally harvested as bycatch while targeting other species, there was no allowable harvest in 2015, 2016, and 2017.

The process established through Amendment 28 specifies that harvest would begin in July, and specifies when the commercial and recreational seasons would open and close and the applicable fishing regulations during any open season. The commercial red snapper season closes when the commercial ACL is met or projected to be met. The length of the recreational red snapper season is projected and announced before the start of the season, based on catch rate estimates from previous years. The NMFS Regional Administrator (RA) has the authority to delay the opening of red snapper fishing seasons in the event of a tropical storm or hurricane affecting the area of the Council's jurisdiction. Additionally, there is no minimum size limit for either the commercial or recreational sector; the commercial trip limit is 75 lb (34 kg), gutted weight, and the recreational bag limit is one fish per person per day.

This temporary rule will allow limited commercial and recreational harvest of red snapper in 2017 by implementing a total ACL of 42,510 fish, based on the landings observed during the limited red snapper season in 2014. The total ACL is divided into a commercial ACL of 124,815 lb (56,615 kg), round weight, and a recreational ACL

of 29,656 fish, based the current sector allocation ratio developed by the Council for red snapper (28.07 percent commercial and 71.93 percent recreational). The commercial sector's ACL is set in pounds of fish because the commercial sector reports landings in weight and therefore weight is a more accurate representation of commercial landings. In this temporary rule, for the commercial sector, one red snapper is equivalent to 9.71 lb (4.40 kg), round weight. ACLs for the recreational sector are specified in numbers of fish because numbers of fish are a more reliable estimate for that sector than specifying the ACL in weight of fish. Surveys that estimate recreational landings collect information on numbers of fish and convert those numbers to weights using limited biological samples, so there is considerable uncertainty in estimates of recreational landings by weight.

The recreational bag limit will be one fish per person per day and the commercial trip limit will be 75 lb (34 kg), gutted weight. There will not be a minimum size limit set for either sector. The commercial sector will close when the commercial ACL is projected to be met during the limited 2017 fishing season. The opening and closing of the recreational sector is being specified before the recreational season begins and consists of two weekends only (Friday, Saturday, Sunday). The effectiveness of this temporary rule is only

for the 2017 fishing year and does not authorize any harvest after December 31, 2017.

Status of the Stock

The most recent stock assessment for South Atlantic red snapper, SEDAR 41 (2017), was completed in 2016 and revised in 2017. SEDAR 41 (2017) evaluated data through 2014 and determined the red snapper stock was overfished and that overfishing was occurring. The stock assessment indicated that overfishing was occurring because the estimated fishing mortality based on the average over the last three years of the assessment represented in the model (2012-2014) exceeded the maximum fishing mortality threshold. Though limited red snapper harvest was allowed during those years, the majority of the estimated fishing mortality occurred from estimated dead discards. The estimated red snapper discards during these years were very high as a result of fishermen targeting red snapper and species that co-occur with red snapper, such as vermilion snapper, gag, red grouper, black sea bass, gray triggerfish, greater amberjack, and scamp.

In May 2016, the Council's Scientific and Statistical Committee (SSC) stated that SEDAR 41 (2017) was based on the best scientific information available, but noted the assessment findings were highly uncertain regarding to what extent overfishing was occurring (*i.e.*, the actual numerical value of the current fishing mortality

estimate). The SSC indicated that the most significant sources of uncertainty in the assessment include: the stock-recruitment relationship, natural mortality at age, the age structure of the unfished population, the composition and magnitude of recreational discards (where dead discards greatly outnumbered the landings during the years 2012 through 2014), and potential changes in catch per unit effort (CPUE).

The projections of yield streams used in SEDAR 41 (2017) included both landings and dead discards, which were added to get an estimate of the total removals. However, red snapper is primarily a discards-only fishery as a result of the harvest prohibitions. Therefore, the Council determined that discard-only projections (zero landings) would be more informative for management. In January 2017, the Council requested the NMFS Southeast Fishery Science Center (SEFSC) provide red snapper projections under the assumption that all fish caught are subsequently discarded. Following the request, the SEFSC advised the Council in February 2017 that the requested projections were not appropriate for management use because uncertainty in the assessment was already large, and the uncertainty would increase with a more complete evaluation of the effect of the upcoming changes to Marine Recreational Information Program (MRIP). Recreational catch and effort data, including discards, are

monitored through MRIP, which is currently transitioning from the current Coastal Household Telephone Survey to a new mail survey design for estimating marine recreational shore and private boat fishing effort, known as the Fishing Effort Survey. NMFS expects that the Fishing Effort Survey will result in a more efficient representation of recreational fishing effort, including that of discards; however, in order for a new survey method to be implemented, historical catch statistics will need to be converted into the same 'currency' as the new estimates. This process is underway.

Additionally, in their February 2017 response, the SEFSC also advised the Council that the uncertainty in the stock assessment inhibits the ability to set an ABC that can be effectively monitored. The SEFSC further stated in an April 2017 letter to the Council, that the use of an ABC based primarily on fishery discards for monitoring the effectiveness of management action is likely ineffective due to the high level of uncertainty in measures of discards and the change in the effort estimation methodology that will be implemented in the MRIP survey.

NMFS informed the Council in a letter, dated March 3, 2017, that, based on the results of SEDAR 41 (2017) using data through 2014, the red snapper stock was still overfished but was rebuilding in accordance with the rebuilding plan. Further, NMFS stated that

sufficient steps had been taken to address overfishing of red snapper while continuing to rebuild the stock through harvest prohibitions in 2015 and 2016. This determination is supported by an increase in stock biomass since 2010, and increasing abundance of older age classes (SEDAR 41 2017).

Justification and Need for This Temporary Rule

The intended effect of this temporary rule is to minimize adverse socio-economic effects to fishermen and fishing communities that utilize red snapper as part of the snapper-grouper fishery. Fishing seasons that prohibit the harvest of red snapper incur lost opportunities to fish among both the commercial and recreational sectors. NMFS and the Council expect that increased fishing opportunities resulting from these temporary measures should provide direct benefits to fishermen in the form of additional revenue and recreational opportunities, in addition to indirect benefits to businesses that provide supplies for fishing trips. NMFS expects the total aggregate increase in the 2017 fishing season ex-vessel revenues to commercial vessels as a result of these temporary measures would range from \$176,940-\$236,279 (2016 dollars), and that up to 658 federally permitted commercial snapper-grouper vessels could participate in this harvest in 2017. The recreational consumer surplus to anglers as a result of a limited 2017 harvest could

increase by about \$2,402,136 (in total; assuming that each of the 29,656 recreational fish is harvested by an individual angler). The potential also exists for revenues and profits generated by charter vessels and headboats (for-hire vessels) and fishing support businesses to increase, but such effects cannot be estimated with the current information.

NMFS determined that allowing limited harvest of red snapper in 2017 is not likely to result in overfishing, or prevent continued stock rebuilding. This determination is based on the uncertainty in the assessment associated with: the stock-recruitment relationship, natural mortality at age, the age structure of the unfished population, and the composition and magnitude of recreational discards inhibiting the ability of the SEFSC to project ABC into the future. Additional support comes from fishery-independent information collected through the Southeast Reef Fish Survey (SERFS) program, and the East Coast Fisheries Independent Monitoring information conducted by Florida Fish and Wildlife Conservation Commission (FWCC), presented to the Council at their June and September 2017 meetings, respectively. According to the SERFS, relative abundance (CPUE) of red snapper has increased since 2009, reaching the highest level observed in the entire time series (1990-2016) in 2016. According to the results of FWCC's study, CPUE

for red snapper for hook gear (surveyed in 2012, 2014, 2016, and 2017) and the standardized index of abundance (surveyed from 2014-2017) was highest in 2017. The FWCC data also showed a greater number of large red snapper and a broader range of ages in recent years, which suggests rebuilding progress of the red snapper stock. The Council's SSC noted a red snapper population increase in their April 2017 report, stating that "...a continuing upward trend in the fishery-independent index has a high probability of reflecting increases in population size." As noted by the new information presented to the Council in June and September 2017, the increase in relative abundance of red snapper indicated by the fishery-independent CPUE indices has taken place despite landings during the limited seasons in 2012-2014 and despite the large number of estimated red snapper dead discards during harvest restrictions for red snapper since 2010. The amount of harvest allowed in this temporary rule is equivalent to the amount of observed landings in the 2014 fishing season. Therefore, NMFS has determined that allowing that same amount of harvest in this temporary rule in 2017 is unlikely to result in overfishing or change the red snapper rebuilding time period, and is based on the best scientific information available.

Emergency Rule Criteria

NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR

44421, August 21, 1997) list three criteria for determining whether an emergency exists, and this temporary rule is promulgated under these criteria. Specifically, NMFS' policy guidelines require that an emergency:

(1) Result from recent, unforeseen events or recently discovered circumstances; and

(2) Present serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

NMFS has determined that allowing harvest in 2017 meets the three criteria required for an emergency rule. The new red snapper abundance and CPUE information collected through the SERFS program and FWCC's study constitutes recently discovered circumstances, since it was presented to the Council at their June 2017 and September 2017 meetings. In addition, the continued harvest prohibition of South Atlantic red snapper poses significant management problems to NMFS and the Council. Fishery closures result in the limited collection of fishery-dependent data, and that negatively impacts

the stock assessment process. Additionally, the harvest prohibition of red snapper results in adverse socio-economic effects to fishermen and fishing communities through lost opportunities among the commercial and recreational sectors to fish for and possess red snapper during the fishing year. Input from fishers also indicates that they are increasingly frustrated with the perceived waste of the red snapper resource resulting from the continued discarding of red snapper when they target co-occurring species. Finally, the immediate benefits of implementing a limited red snapper commercial and recreational fishing season in 2017 outweigh the value of providing advance notice and public comment under the normal rulemaking process. Public comments on this action at the September 2017 Council meeting indicated that many fishermen favored a limited 2017 season. The Council considered these public comments when they recommended that NMFS proceed with a temporary rule for emergency action at their September 2017 meeting. Further, the time it would take to complete public notice and solicit public comments through rulemaking would not allow adequate time for a fishing season to take place in 2017.

Additionally, while harvest restrictions remain in place, fishers report they are encountering large numbers of red snapper, which is further supported by the long-term SERFS

fishery-independent CPUE index. Allowing a limited amount of harvest in 2017 through this temporary emergency action would allow commercial and recreational fishermen to harvest this species, and would also generate revenue for businesses within these sectors. Also, limited commercial and recreational harvest of red snapper in 2017 will provide an opportunity to collect fishery-dependent data including catch, fishing effort estimates, and life history information that will be useful for future red snapper stock assessments and management decisions.

Measures Contained in This Temporary Rule

This temporary rule implements management measures to authorize the limited harvest and possession of red snapper in or from the South Atlantic EEZ in the 2017 fishing year. The 2017 commercial ACL is set at 124,815 lb (56,615 kg), round weight, and the 2017 recreational ACL is set at 29,656 fish. These ACLs are based on the total 2017 ACL, as determined by NMFS, of 42,510 fish and following the current allocation ratio for red snapper (28.07 percent commercial and 71.93 percent recreational).

NMFS and the Council are establishing several management measures that function as accountability measures to constrain red snapper harvest to these ACLs, including the establishment of limited commercial and recreational red snapper seasons for 2017. The

recreational season will open for two consecutive weekends made up of Fridays, Saturdays, and Sundays. The recreational season opens at 12:01 a.m., local time, on November 3, 2017, and closes at 12:01 a.m., local time, on November 6, 2017; then reopens at 12:01 a.m., local time, on November 10, 2017, and closes at 12:01 a.m., local time, on November 13, 2017. The commercial season opens at 12:01 a.m., local time, [*insert date of publication in the FEDERAL REGISTER*]. NMFS will monitor commercial landings in-season and if commercial landings reach or are projected to reach the commercial ACL, then NMFS will file a notification with the Office of the Federal Register to close the commercial sector for red snapper for the remainder of the 2017 fishing year. NMFS notes that if the commercial ACL has not been met or been projected to have been met by December 31, 2017, no commercial harvest would be allowed through this temporary rule after 11:59 p.m., local time, on December 31, 2017. Harvest will additionally be constrained through the implementation of commercial and recreational management measures such as trip limits and bag limits.

During these limited 2017 fishing seasons, the commercial sector will have a 75 lb (34 kg), gutted weight, daily commercial trip limit and the recreational sector will have a 1 fish per person daily recreational bag limit. The 1 fish per person recreational bag

limit is included in the 10-fish aggregate snapper bag limit. No size limits are implemented for either sector through this temporary rule in an effort to decrease regulatory discards (fish returned to the water because they are below the minimum size limit). If severe weather conditions exist, the RA has the authority to modify these opening and closing dates. The RA will determine when severe weather conditions exist, the duration of the severe weather conditions, and which geographic areas are deemed affected by severe weather conditions. If severe weather conditions exist or if NMFS determines the 2017 commercial or recreational ACLs were not harvested and a reopening of either or both sectors in 2017 is possible, the RA will file a notification to that effect with the Office of the Federal Register, and announce via NOAA Weather Radio and in a Fishery Bulletin any change in or reopening of the red snapper fishing seasons.

The Council is currently developing both Amendment 43 and Amendment 46 to the FMP. Amendment 43 contains actions to establish commercial and recreational ACLs and associated revisions to management measures for red snapper that would allow for a specific level of harvest each year. At its September 2017 meeting, the Council took final action and approved Amendment 43 and will submit the amendment to the Secretary for subsequent rulemaking and

implementation during the 2018 fishing year. Amendment 46, in preliminary development by the Council, would consider other red snapper management measures.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this temporary rule is necessary to promote an economic opportunity for South Atlantic snapper-grouper fishermen that otherwise would be foregone and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is being taken pursuant to the emergency provision of MSA and is exempt from OMB review.

The AA finds good cause under 5 U.S.C. 553(b) (B) to waive prior notice and the opportunity for public comment because they are contrary to the public interest. This temporary rule promotes an economic opportunity for South Atlantic snapper-grouper fishermen that would otherwise be forgone if harvest in 2017 were not to occur. Limited harvest and possession of red snapper in 2017 is expected to result in revenue increases to commercial vessels and benefit increases to recreational anglers, in addition to providing opportunity to for-hire vessels in booking more trips that could increase their revenues and profits. At the September 2017 Council

meeting, South Atlantic snapper-grouper fishermen discussed the merits of opening red snapper in the South Atlantic for a short time period in 2017. Fishermen will be able to keep a limited number of the red snapper that they are currently required to discard. As previously discussed, commercial fishermen should be able to increase their revenues in 2017 by being able to sell a highly marketable fish during the limited opening. Additionally, short red snapper seasons will provide an opportunity to collect fishery-dependent data that likely may be useful for future stock assessments. Currently, the lack of available red snapper data hinders the ability to assess the status of the stock. Delaying the implementation of this rulemaking to provide prior notice and the opportunity for public comment would reduce the likelihood of opening the red snapper component of the snapper-grouper fishery in the 2017 fishing year. As a result of the recent receipt of scientific information indicating that harvest in 2017 is possible, there is insufficient time for NMFS to implement these measures earlier in this fishing year and/or possibly allow for prior notice and opportunity for public comment on the rulemaking. The harvest allowed in 2017 in this rule is not expected to result in overfishing or impede rebuilding of the stock.

For these same reasons, the AA also finds good cause to waive

the 30-day delay in effectiveness of the actions under 5 U.S.C. 553(d) (3) .

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Red snapper, South Atlantic.

Dated: October 27, 2017.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH

ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.181, suspend paragraph (b) (2) and add paragraph (c) (2) to read as follows:

§ 622.181 Prohibited and limited-harvest species.

* * * * *

(c) * * *

(2) *Red snapper.* Red snapper may only be harvested or possessed in or from the South Atlantic EEZ during the commercial and recreational seasons as specified in § 622.183(b) (9) and § 622.193(aa). Any red snapper caught in the South Atlantic EEZ during a time other than the specified commercial or recreational seasons specified in § 622.193(aa) must be released immediately with a minimum of harm. In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the prohibition on the harvest or possession of red snapper applies in the South Atlantic, regardless of where such fish are harvested or possessed, *i.e.*, in state or Federal waters.

3. In § 622.183, suspend paragraph (b) (5) and add paragraph (b) (9) to read as follows:

§ 622.183 Area and seasonal closures.

* * * * *

(b) * * *

(9) *Closures of the commercial and recreational sectors for red snapper*--(i) The commercial and recreational sectors for red snapper are closed (*i.e.*, red snapper may not be harvested or possessed, or sold or purchased) in or from the South Atlantic EEZ, except as specified in § 622.193(aa). The recreational fishing season would consist of consecutive Fridays, Saturdays, and Sundays, unless otherwise specified. See § 622.193(aa), for establishing the end date of the commercial fishing season.

(ii) If the RA determines tropical storm or hurricane conditions exist, or are projected to exist, in the South Atlantic, during a commercial or recreational fishing season, the RA may modify the opening and closing dates of the fishing season by filing a notification to that effect with the Office of the Federal Register, and announcing via NOAA Weather Radio and a Fishery Bulletin any change in the dates of the red snapper commercial or recreational fishing season.

4. In § 622.187, suspend paragraph (b) (9) and add paragraph (b) (12) to read as follows:

§ 622.187 Bag and possession limits.

* * * * *

(b) * * *

(12) *Red snapper*--1. See § 622.183 (b) (9), and § 622.193 (aa) (2) for details on the recreational fishing season.

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5. In § 622.191, suspend paragraph (a) (9) and add paragraph (a) (13) to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(13) *Red snapper*. Until the commercial ACL specified in § 622.193 (aa) (1) is reached, 75 lb (34 kg), gutted weight. See § 622.193 (aa) (1) for the limitations regarding red snapper after the commercial ACL is reached. See § 622.183 (b) (9), and § 622.193 (aa) (1) for details on the commercial fishing season.

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6. In § 622.193, suspend paragraph (y) and add paragraph (aa) to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets

(ACTs), and accountability measures (AMs) .

* * * * *

(aa) *Red snapper*--(1) *Commercial sector*. The commercial ACL for red snapper is 124,815 lb (56,615 kg), round weight. See § 622.183(b)(9) for details on the commercial fishing season. NMFS will monitor commercial landings during the season, and if commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACL, the AA will file a notification with the Office of the Federal Register to close the commercial sector for red snapper for the remainder of the year. On and after the effective date of the closure notification, all sale or purchase of red snapper is prohibited and harvest or possession of red snapper is limited to the bag and possession limits. This bag and possession limit and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested or possessed, *i.e.*, in state or Federal waters.

(2) *Recreational sector*. The recreational ACL for red snapper is 29,656 fish. The recreational season, consists of weekends only (Fridays, Saturdays, and Sundays). The length of

the recreational fishing season for red snapper serves as the in-season accountability measure. See § 622.183(b)(9) for details on the recreational fishing season. On and after the effective date of the recreational closure notification, the bag and possession limits for red snapper are zero.

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